JOE N. JOHNSON

IBLA 86-1378 Decided June 21, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer NM-A 46653 OK.

Affirmed.

1. Res Judicata--Rules of Practice: Appeals: Generally

Absent compelling legal or equitable reasons for reconsideration, when an appeal has previously been taken and a final Departmental decision has issued, the doctrine of administrative finality bars consideration of a new appeal arising from a later proceeding involving the same claim and issues.

2. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: First-Qualified Applicant

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected when the lands have been leased to a senior offeror, and the junior offeror fails to show valid reasons why the senior offer is defective.

APPEARANCES: Virgil D. Medlin, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Joe N. Johnson has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 12, 1986, which rejected in part, noncompetitive over-the-counter acquired lands oil and gas lease offer NM-A 46653 OK. The BLM decision states that appellant's offer was rejected to the extent that it conflicted with oil and gas lease NM-A 50724 OK, which was issued to Peter W. Hummel and Frank G. Wells, effective November 11, 1985. 1/

1/ The decision rejected appellant's lease offer as to tracts 102, 103, 104, 106, part of 114, 116, 117, 119, 121, 122, 122C, 123, 124, 127, 127C, 128, 129, part of 131, part of 134, 137, 138, 146, 147, 148, part of 149, and 151. The decision further stated that the remaining parts of tracts

The history of appellant's oil and gas lease offer was summarized in Joe N. Johnson, 78 IBLA 382 (1984), wherein we stated:

> On July 22, 1981, appellant filed an "Offer to Lease and Lease for Oil and Gas Noncompetitive Acquired Lands Lease," Form 3110-3 (March 1978). With his offer appellant submitted $2,743 for filing fees and the first year's rental on 33 tracts of land identified by tract number. Appellant calculated the acreage to be 2,732.85 acres. In making the calculation appellant made a prorata reduction of the acreage and resulting rental for the tracts subject to the offer which were fractionally owned by the United States. Attached to the offer was a sheet noting those tracts which were fractionally owned and the net acreage calculated by the appellant. Using appellant's calculations, the first year's rental due for the net acreage was $2,733. While the total acreage was not shown on the appellant's offer, the total acreage calculated by BLM, based on the maps and attach-ments submitted with appellant's offer, is 3,049.65 acres.
>
> * * * * * * *
>
> On September 28, 1982, BLM issued a decision that the applicant must sign and return stipulations included with the deci- sion prior to the issuance of the lease. Interlineated in the decision was a holographic notation as follows: "The acreage on your offer is 3015.27, therefore an additional $283.00 is due at this time." On October 10, 1982, appellant signed the stipulations and returned same together with a check in the amount of $283. Receipt 315477 reflects receipt of this amount on October 15, 1982.
>
> On July 19, 1983, BLM again issued a decision with respect to this lease offer. This decision stated that the "total of the acreage for the lands applied for is 3049.65. On July 22, 1981, the date the offer was filed, only $2,733.00 was remitted for the advance rental, which is over 10 percent short of the required amount." The decision then stated that "pursuant to 43 CFR 3103.3-1, this offer is rejected in its entirety."
>
> On August 18, 1983, BLM received notice of appellant's appeal of the July 19, 1983, decision. A statement of reasons was filed with this Board on September 12, 1983.

Id. at 383-84.

---

fn. 1 (continued)
114, 131, 134, and 149 must be described by metes and bounds pursuant to 43 CFR 3111.2-2(b). A lease for tracts 101, 112, 113, 118, and 118-2 was issued to appellant with an effective date of June 1, 1986.

In its determination on the merits of the case, the Board concluded:

> In response to the provisions of the decision of September 28, 1983, appellant submitted additional payment in the amount of $283. This amount was received October 15, 1982. The effect of the submittal of this additional payment at the request of BLM was to cure the defect contained in the original offer, effective October 15, 1982. When the balance is paid prior to rejection by BLM and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected. Gian R. Cassarino, 78 IBLA 242, 247 (1984). While the record indicates that there is another offer pending with respect to all or a portion of the same lands, there is nothing in the record to indicate the date that the other offer was filed. The July 19, 1983, BLM determination that the initial amount submitted was more than 10 percent deficient and that because of the deficiency the offer should be rejected would be affirmed had the defect not been cured on October 15, 1982. The priority of the appellant's application should be determined as of October 15, 1982. [Emphasis added.]

Id. at 385-86.

On September 30, 1981, Hummel and Wells filed conflicting oil and gas lease offer NM-A 50724 OK, for a portion of the land described in appellant's offer. As this offer was complete on the day it was filed with BLM, its priority attached on that date.

On appeal to the Board, appellant now contends that he was the first-qualified applicant for the land at issue. He asserts that BLM erroneously calculated the amount of rental due for the acreage claimed in his oil and gas lease offer. Appellant contends that the September 28, 1982, BLM decision, which concluded that his lease offer contained 3,015.27 acres, should have been the basis upon which the amount of rental payment was determined. In consideration of the September 28 decision, appellant argues his $2,733 advanced rental payment represented 90.64 percent of the rental due and a deficiency of only 9.36 percent and within the limitation set by the applicable regulation, 43 CFR 3103.3-1 (1981). Appellant further argues, in the alternative, that should the BLM decision of July 19, 1983, which rejected his lease offer in its entirety be given effect and his lease in fact did contain 3,049.65 acres, his advance rental payment of $2,733 represented 89.61 percent of the required payment and should have been rounded off to the nearest whole number.

Appellant maintains that BLM acted in violation of 43 CFR 3110.3(b), when it issued a lease to Hummel and Wells before final action was taken on his lease offer pursuant to the Board decision of January 31, 1984, which
vacated and remanded the BLM decision of July 1983. In consequence thereof appellant contends the Hummel and Wells lease should have been cancelled because a final decision on his offer to lease was not issued until May 12, 1986.

[1] Appellant's arguments are an attempt to resurrect the identical issues considered by this Board in Joe N. Johnson, supra. Appellant has chosen to ignore the fact that the Board has adjudicated the issues and rendered a decision specifically stating the date of priority of appellant's offer, which became final in 1984. No further right of appeal now exists within this Department from that final determination. Absent compelling legal or equitable reasons for reconsideration, when a final Departmental adjudication has been made, the doctrine of administrative finality, the administrative counterpart of res judicata, bars further consideration of the issues decided in a new appeal arising from the same claim and issues. Gabbs Exploration Co. v. Udall, 315 F.2d 37 (D.C. Cir.), cert. denied, 375 U.S. 822 (1963); Village of South Naknek, 85 IBLA 74 (1985); Ben Cohen, 21 IBLA 330 (1975). Cf. Hamlin v. Commissioner, 9 IBLA 16 (1981). As the Board observed in Inexco Oil Co., 93 IBLA 351 (1986), for over-the-counter oil and gas lease offers, the order of priority is of paramount importance. If, in 1984, Johnson was of the opinion that the Board's January 31 decision which established an October 15, 1982, priority date for his offer was in error, it was incumbent upon him to make a timely appeal. He did not appeal that determination, and he cannot do so now. 2/

Therefore, lease offer NM-A 50724 OK completed as filed on September 30, 1981, received priority as of that date, and absent disqualifying flaws entitled Hummel and Wells to lease the land requested in their offer.

Appellant has also challenged the validity of the Hummel and Wells lease on other grounds. He asserts the lease offer is violative of the 6-mile square rule. Appellant's contention is in error. The applicable regulation states: "The lands in an offer or parcel shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions." 43 CFR 3110.1-3(b); see generally, W.O.I.L. Associates, 92 IBLA 312 (1986). Lease offer NM-A 50724 OK is not violative of this regulation.

Appellant contends that lease offer NM-A 50724 OK, which was for 4,540 acres, exceeded the maximum number of acres allowed in an offer to lease at the time it was filed. However, the applicable regulation at the time, 43 CFR 3110.1-3(b) (1981), permitted acquired lands oil and gas lease offers to include 10,240 acres.

Appellant also asserts that Hummel and Wells did not comply with 43 CFR Subpart 3102 because they failed to file their articles of association, statements of qualifications, and disclosure of other parties in interest. An examination of the lease shows Hummel and Wells signed the lease offer as joint offerors. The Board has determined that the filing of an oil and gas

---

2/ See Fletcher De Fisher, 101 IBLA 212 (1988), for a discussion of timely filing of motions for reconsideration. Appellant's argument that the Board improperly determined the priority date of his offer is clearly untimely.

lease offer by two persons, both acting as offeror, is acceptable where the offer form is signed by the individuals named thereon as offerors. See Joe N. Johnson, 74 IBLA 383 (1983). The issuance of leases to two individuals as joint offerors has often been recognized by the Department when the offer has been signed by both individuals as offerors. See, e.g., Turner C. Smith, Jr., 66 IBLA 1, 89 I.D. 386 (1982); Al Warden, 67 I.D. 223 (1960); W. H. Burnett, 64 I.D. 230 (1957). The lease form itself contains signature lines for two lessees. The regulation regarding other parties in interest, which requires disclosure of such parties and the agreement between them, applies to parties other than those named as offerors on the lease offer. See Clayton H. Read, 49 IBLA 200, 203 (1980) (Burski, J., concurring).

Further, appellant contends that the lease offer violated the regulations because it did not properly describe the lands in the offer by tract acquisition number, failed to include appropriate maps, did not detail the mineral interests not held by the United States, and included public domain lands. In each case, appellant is in error as to the requirements of the applicable regulations in force and effect at the time of the Hummel and Wells lease offer.

[2] Appellant has failed to show that the lease offer submitted by Hummel and Wells was defective in any way. Under 30 U.S.C. | 226(c)
(1982), a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, and a junior offer is properly rejected to the extent that it includes land in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective. Johnson's offer was properly rejected. Irwin Wall, 68 IBLA 243 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge